THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.12870 of 2007

% 29.06.2007

Between:

M/s Venkateswara Housing Private Limited,
Rep. by its Chairman & Managing Director

…Petitioner

And

The Commissioner and Inspector General of
Registration & Stamps, A.P., Hyderabad and others

…Respondents

! COUNSEL FOR Petitioner: Sri Bhaskara Rao Bandarupalli

^ COUNSEL FOR RESPONDENTS: G.P. for Revenue

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> Head Note:

? CITATIONS:

1) 2006 (6) ALD 623 (FB)

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JUDGMENT:

The petitioner is a private limited company. One of the objects,

it has chosen to pursue, is, development and construction.

It is said to have acquired land, in and around Guntur town and developed the same. Gorijala Padmaja and Gorijala Srinivasa Rao, claiming to be the Executive Director and Managing Director of the Company, have executed a sale deed dated 27-12-2003, registered as document No.12329/2003 in the office of the

3rd respondent, in favour of one Sri Pentyala Sree Ramulu and Jagarlamudi Lakshmamma. They have also executed sale deed Nos.8348 and 8349/2004, dated 17-07-2004, in favour of Kovi Rama Murthy and Kovi Nagamani, respectively. Through these three sale deeds, vast extent of properties were transferred.

It is stated that Sri K.L. Narasimha Rao, is the present Chairman and Managing Director of the Company. According to him, the sale deeds, executed by Smt. Padmaja and Sri Srinivasa Rao are without any authority, and are tainted with fraud. It is in this background, that the petitioner presented three deeds of cancellation, purporting to cancel the sale deed Nos.12329/2003, dated 27-12-2003, and 8348 and 8349/2004, dated 17-07-2004. The grievance of the petitioner is that, though the document was presented long back and though the 3rd respondent has undertaken extensive correspondence with respondents 1 and 2, the documents have not been registered and released so far.

Learned counsel for the petitioner submits that the 1st respondent ought to have registered the deeds of cancellation, without reference to the respondents 1 and 2, particularly in view of the judgment of a Full Bench in ***Yanala Malleshwari v. Ananthula Sayamma***[1]. He contends that the amendment to Rule 26 of A.P. Rules, framed under the Registration Act, by addition of Clause (k)

does not apply to the facts of the present case, and the participation of the parties to deeds, which are sought to be cancelled, cannot be insisted upon.

Learned Government Pleader for Revenue, on the other hand, submits that even if the facts, pleaded by the petitioner, are taken into account, its request cannot be acceded to. He contends that, assuming that there is a change in the composition of Board of Directors, that fact, by itself, cannot confer any right upon the company, to cancel the sale deeds, executed on its behalf. He submits that, in view of the recent amendment to Rule 26 of the Rules, a deed of cancellation can be executed only with the participation of the parties to the document, which is sought to be cancelled.

The petitioner presented a deed of cancellation before the 3rd respondent. The purpose was, to cancel a sale deed dated 27-12-2003, and two sale deeds, dated 17-07-2004, executed on behalf of the company, in favour of Pentyala Sree Ramulu, Jagarlamudi Lakshmi, Kovi Rama Murthy and Kovi Nagamani. Through the said sale deeds, certain items of property were transferred. The petitioner attributed fraud and collusion, apart from lack of title and authority, to the vendors to the sale deeds. The deeds of cancellation, in turn, are executed by a totally different party. Neither the vendor, nor the purchaser to the sale deeds are parties to the deeds of cancellation. On receiving these documents, the 3rd respondent addressed letter dated 15-12-2006 to the 2nd respondent, seeking clarification in the light of the recent amendments to the Rules. The 2nd respondent, in turn, sought clarification from the 1st respondent through letter dated 28-12-2006. Having waited sufficiently, the petitioner submitted a detailed representation dated 02-

04-2007 to the 3rd respondent, to release the document.

It is urged that, in view of the law laid down by the Full Bench of this Court in ***Yanala Malleshwari v. Ananthula Sayamma*** (1 supra), the respondents cannot insist on participation of the parties to the documents, which are sought to be cancelled, for the purpose of registering a deed of cancellation. It is no doubt true that the Full Bench of this Court, by a majority of 2:1, held that the Registering Authority can admit a deed of cancellation to registration, without insisting on participation of the parties to the transaction, which is sought to be annulled. An SLP against the judgment of the Full Bench is said to be pending before the Hon'ble Supreme Court.

One important and substantial development has taken place, on the legislative side, after the judgment was rendered by the Full Bench. In exercise of power conferred under Section 68 of the Registration Act, the Rule making Authority had amended the A.P. Rules, framed under the Registration Act. An independent clause was added to Rule 26. This clause insists that, before any deed of cancellation is admitted to registration, the Registering Authority shall ensure, that the parties to the deed, which is sought to be cancelled, have consented for cancellation thereof. The provision, which is introduced through amendment, reads as under:

> **Rule 26(k)(i)**: "The registration officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;
>
> Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant

parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law

(ii) Save in the manner provided for above no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation for registration.

(ii) if there are any informalities in presentation of a nature which can be remedied, for instance, non-compliance of the requirements mentioned in Clauses (a) to (f), (h), (i) and (j) of sub-rule (i) of this rule, the Registering Officer shall give the party such information or any be necessary and return the fees and the document with a view to the document being presented again in due form. The action of the Registering Officer shall be confined to advice and he shall not himself alter the document in any way".

Therefore, it becomes mandatory that before a deed of whatever category, executed between or among various parties;

is cancelled, the parties to such deed must consent for cancellation thereof, and must join as parties to the deed of cancellation.

In other words, it would not be permissible for a vendor alone, under a sale deed, to cancel that document, without participation of the purchasers also. Therefore, the uncertainty, that prevailed in the matter is virtually put at rest with the introduction of clause (k) in Rule 26 of the Rules.

In the instant case, the request of the petitioner cannot be acceded to, for more reasons than one: Firstly, the recitals in the deed of cancellation proceeds, as though the transferors, in the deed sought to be cancelled; do not have any right to transfer the property mentioned therein. It means that the petitioner or the executant of the present deed of cancellation, does not represent the vendors, that

figured in the documents, that are sought to be cancelled. The petitioner is a third party to the transactions, for all practical purposes. Secondly, the transferees under the said document have not given their consent for cancellation of the deeds, through which the property was cancelled in their favour, much less have joined as parties to the deeds of cancellation. Therefore, non-compliance with the requirements under the Law, as it stands now, is evident on the face of it.

Under these circumstances, the 3rd respondent cannot be compelled to register the deeds of cancellation, presented by the petitioner.

The writ petition is dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.29-06-2007.

Note:
L.R copy to be marked.
*(B/O)KO**

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[1] 2006 (6) ALD 623 (FB)